IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 1235 OF 2001

AND

CROSS OBJECTION NO. 2 OF 2001

IN

SUIT NO. 1143 OF 1986

Hiralal Ghanshamdas Kukreja & Ors. ..Appellants
(Org. Defendants)

Versus

Mohanlal Ghanshamdas Kukreja ..Respondent
(Org. Plaintif)

Mr. Ravi Kadam, Advocate General, with Mr.V.J.Makhija, Advocate for the Appellants.

Mr. R.D.Soni i/b. Mr. R.P.Chheda for Respondent.

CORAM: D.K.DESHMUKH &
J.H.BHATIA,JJ.

DATE: 28th September,2007.

P.C.

1. By consent of the parties, the Appeal and the Cross Objection are disposed of on the following terms :-

(a) That the plaintiff had 18% share in the property i.e. all that piece or parcel of land or ground together with the bungalow and structures standing thereon situate and being at Khar Bandra, Taluka South Salsette District, Bombay Suburban Registration Sub-District Bandra, registration District: Bombay Suburban (now in the Registration Sub-District and District of Bombay City and Suburban) and included in the Municipal limits of Bombay, bearing Final Plot No.719 of Bandra Town Planning Scheme No.3 and bearing New City Survey No.E/399 containing by admeasurement 980 square yards i.e. 919 square meters or thereabouts and bounded as follows : that is to say on or towards the North by plot No.720 of the Scheme, on or towards the South by Khar Pali Danda Road, on or towards the East by the Plot No.728 of the said scheme and on or towards the west by the proposed road.

(b) It is also agreed that in the above described property, the defendant No.1 - Hiralal also has

18% share. So far as the other defendants, viz. Shankarlal, Prem, Shamibai and Ramesh each have 16% share.

(c) It is also agreed that Shamibai who had 16% share in the property is no more and there is a dispute between the parties as to who is entitled to take her share in the property.

(d) It is also agreed between the parties that it is not possible to partition the property by metes and bounds and, therefore, the parties have agreed that the property should be sold in the following manner:-

(i) The Commissioner for Taking Accounts is appointed for disposing of the property.

(ii) The upset price of the property is fixed at Rs.10 crores (Rupees ten crores only). This upset price is indicated by the defendant No.1 - Hiralal.

(iii) The bidding of the property will be held between the plaintiff and the defendants

(iv) The person whose bid may be highest, will have to deposit 10% of the amount of the bid within a period of one week from the date of bidding and the balance amount within a period of four weeks from the date of the deposit of the 10% amount.

(e) It is agreed between the parties that the property is occupied by the defendants Nos. 1 and 5. Within a period of four weeks from today, defendant Nos. 1 and 5 shall submit an undertaking to the Court undertaking therein that if they do not turn out to be the highest bidder, they will hand over vacant possession to the successful bidder within a period of three months from the date on which the successful bidder completes deposit of full amount.

(f) The Commissioner is hereby authorised to execute conveyance of the property in favour of the successful bidder. The sale deed shall be executed immediately after the full amount of consideration is deposited.

(g) Initially, the plaintiff to deposit Rs.10,000/- (Rupees ten thousand only) with the Commissioner. After the amount of consideration

is deposited, the Commissioner shall first deduct the amount deposited with him by the plaintiff for expenses and make it over to the plaintiff.

(h) The Commissioner shall, from the amount of sale proceeds in deposit with him, pay 18% amount to the plaintiff and defendant No.1 each, 16% amount shall be paid to defendant No.2 - Shankarlal, defendant No.3 - Prem and defendant No.5 - Ramesh.

(i) In case the plaintiff turns out to be the successful bidder,on the date on which the plaintiff deposits the full amount of consideration, Receiver of this Court shall stand appointed as Receiver of the property. He however, shall not disturb possession of the persons who are in possession of the property. They will continue to be in possession of the property as agents of the Receiver on usual terms and conditions except royalty and security. The Receiver shall appoint them as agents for a period of three months from the date of deposit of the full amount. On expiry of three months, the agents shall hand over vacant possession of the property to the Receiver and the Receiver shall hand over the

same to the plaintiff. It is made clear that on expiry of the period of three months, the Receiver shall be entitled to take possession from his agents, if necessary by taking police help.

(j) It is held that the plaintiff is entitled to mesne profits at the rate of Rs.5,000/- per month from January, 2004 till the date on which full amount of consideration is deposited. It is directed that before distributing the amount as directed above, at the time of deducting the amount of expenses, the Commissioner shall also deduct the amount at the rate of Rs.5,000/- per month as directed above from the share payable to defendants Nos. 1, 2, 3 and 5 and pay it over to the plaintiff. The deduction shall be in equal proportion.

(k) The learned Counsel appearing for the appellant states that within one week from today, copy of the Gift Deed which has been executed by the deceased defendant No.4 in favour of the defendants Nos. 1, 2, 3 and 5 shall be forwarded by the Advocate appearing for the defendants.

(l) It is also agreed that, in case,the Plaintiff turns out to be the highest bidder, he will deposit the purchase price deducting from it the amount equivalent to his 18% share + 1/9th share in the 16% share that would have gone to Defendant No.4-Shamibai.

(m) The learned Counsel appearing for the Defendants Nos.1, 2, 3 & 5 states that they have decided to bid together and therefore, if Defendants Nos. 1,2, 3 & 5 turn out to be the highest bidder, they will deposit the amount of purchase price deducting their own share of 66% as also their 4/9th share in 16% share, which would have otherwise gone to Defendant No.4-Shamibai. They will also deposit the amount of mesne profits which will be payable to the Plaintiff.

In case the Defendants Nos. 1, 2, 3 & 5 turn out to be the highest bidder, they will have to deposit 5/9th share of 16% share which would have gone to Defendant No.4-Shamibai. That amount shall be invested immediately in fixed deposit in a nationalised bank.

In case the Defendant Nos. 1, 2, 3 and 5

produce authorisation from any of the four sisters, who may be entitled to share in that amount, they shall be permitted to withdraw the amount after seeking appropriate orders from the court.

Similarly, in case the Plaintiff produces appropriate consent letter from the sisters, same procedure shall be followed.

Similarly, in case the Plaintiff turns out to be the highest bidder, he will have to deposit 8/9th share of 16% share of Defendant no.4-Shamibai. Out of that amount, defendants Nos. 1,2, 3 & 5 together shall be permitted to withdraw the 4/9th share of 16% share of Defendant No.4. Balance amount shall be invested in fixed deiposit in a nationalised bank. Similarly, in case the Plaintiff produces appropriate consent letter from the sisters, same procedure shall be followed.

In case any of the parties or sisters makes a claim for this amount, the amount shall be permitted to be withdrawn after seeking appropriate orders from the court.

Parties are granted liberty to apply to the court, in case any defect is experienced by the parties in acting in pursuance of this order.

The Appeal and the Cross Objection are disposed of.

2. In view of the above order, the Notice of Motion No. 3427 of 2004 stands disposed of.

(D.K. DESHMUKH,J.)

(J.H.BHATIA,J.)